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15 March 1972

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Director's Testimony Before the
Nedzi Subcommittee

25X1A Attached are some ideas for coping with the possible
suggestions set forth in [REDACTED] memorandum of
13 March 1972. I assume the Office of Security will cover the
Agency Classification Program and the Agency Personnel
Security Program. Some of the suggestions I have made
would cover the Director's termination authority under section
25X1A 102(c) and other problems, [REDACTED]
25X1A [REDACTED]

LAWRENCE R. HOUSTON
General Counsel

Attachment

cc: D/Security

New Executive Order on Classification

1. Q. Were there any provisions that the Agency desired in the new Executive Order which the White House rejected?

A. There were a number of rather minor drafting differences in which some wording that we proposed was not accepted, but there were no substantive items we desired which were rejected by the White House.

2. Q. Are you satisfied that the new Executive Order will provide intelligence sources and methods adequate protection?

A. The Executive Order and the classifications therein do not in themselves protect information. In essence, they provide for notice to recipients of information that it requires protection, but the protection itself must come from sanctions set forth in other laws. The new Executive Order is quite adequate for coping in this limited manner with the problems of intelligence sources and methods.

3. Q. What problems will the Agency have in implementing the automatic declassification provision of the new Executive Order?

A. We do not expect to have any major problem with the automatic declassification provisions of the new Executive Order. The great majority of our information will come under the 30-year

rule, and for some time we have been taking steps to improve our capability to handle the declassification of intelligence material.

4. Q. Are there any other provisions of the Executive Order that the Agency will have problems in implementing?

A. We do not expect to have any major problems in implementing the Executive Order but will need to redraft our Agency regulations and delegations of authority. On the whole, however, the problems are administrative ones of this nature.

Need for Additional Legislation

1. Q. Do you consider existing criminal laws adequate to protect intelligence sources and methods from unauthorized disclosure?

A. The existing criminal laws are not adequate to protect intelligence sources and methods from unauthorized disclosure. Over the years we have examined case after case and have found that either the necessary proof does not exist under existing laws, particularly in the areas of "intent" or "reason to believe," or else we face the problem of confirming officially in open court the information we have been trying to protect. Only two provisions come close to our particular problem in the intelligence field. 18 U.S.C. 798 addresses itself specifically

to the protection of communications intelligence and is a pretty tightly drawn statute for that purpose. This is a very limited field, however, and so far this section has not been tested in the courts, so we are not even sure of its constitutionality.

The only case which arose under section 798 was back in the 1950's and ended with a guilty plea by the accused before trial.

The other section is the so-called Scarbeck act, 50 U.S.C. 783(b), which makes it a crime to pass classified information to an agent of a foreign power. This is probably the most useful approach in the criminal statutes to our problem, but again it is very limited in scope because of the fact that many of the leaks of information relating to intelligence sources and methods are not made to agents of a foreign power, or if there is indication that they have, it may be impossible to prove.

2. Q. Do you feel that any additional legislation is necessary?

A. Obviously, from our point of view legislation which would tend to close the gap described above would be desirable, but we look to the Department of Justice to determine what sort of legislation should be sought. Over the years we have discussed this troublesome problem with the Department of Justice and have from time to time made specific suggestions. We have previously

submitted information in this regard to the staff of this Committee, and, as it is a most intricate and technical subject, I would prefer not to get involved in the details.

3. Q. Do you have any problems in carrying out your responsibilities under the National Security Act of 1947 to protect intelligence sources and methods from unauthorized disclosure?

A. Obviously, there is difficulty in carrying out my statutory responsibilities in regard to intelligence sources and methods. In certain instances we can point to specific situations where release of classified information has cost us the ability to acquire such information thereafter. In other cases we can only speculate as to whether there is cause and effect. After many years of study, we have not found any really satisfactory resolution of this problem in a free society. But, just as newspaper reporters feel that their role in society would be impaired if they were forced to reveal their sources, so is our work hampered if we are unable to protect our sources.

4. Q. What is your position as to the proposed Commission to be established under H.R. 9853? Wouldn't a Commission comprised of representatives from the Executive, Legislative and Judicial branches be the best way to resolve the difficult problems faced?

A. I have no objection to the Commission proposed by H. R. 9853. Whether it is the best way to approach our problem of protecting security I cannot say, although my personal view is that a Commission tends to achieve a rigidity which impairs its effectiveness. Whether the Judiciary would be willing to participate I cannot say, and since the problems involved are essentially legal, I would defer to the Department of Justice as to the best way to proceed.

5. Q. Do you feel that the Congress can be of any assistance and what would you propose?

A. If legislation is the answer, obviously the Congress is essential to the solution and should participate fully in the process of developing the legislation. In other regards also, we need the assistance of the Congress. As an example, our security is only as good as the security and integrity of the people in the Agency. On the whole, the record in this regard is excellent, but this is due mainly to two things. The first is the careful selection of our employees based on the most complete background information as to truthfulness, suitability, loyalty, and emotional stability, plus a continuing program of evaluating personnel through their careers. Secondly, to enforce our standards I have been

given statutory authority to terminate any employee when I deem it in the national interest. I believe both of these elements are essential in the sensitive intelligence agencies of the Government. I am fearful that the Congress, in not recognizing their importance, may enact legislation which will erode our programs and my authorities. I would, of course, appreciate any assistance which can be given in this regard. I would be only too glad to give details on this to your Committee, but again they are highly technical and I believe may be better worked out in the first instance at the staff level.

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